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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1945.

MARY LOIS McINTOSH,

Petitioner,

vs.

CHARLES WIGGINS and MISSISSIPPI
VALLEY TRUST COMPANY, a Corpora-
tion, as Executors u/w of Ella L. Wiggins,
Deceased, and

No. 1047

CHARLES WIGGINS and MISSISSIPPI
VALLEY TRUST COMPANY, a Corpora-
tion, as Trustees Under Certain Trusts
Established by Ella L. Wiggins During
Her Lifetime,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSOURI,
DIVISION ONE.**

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CLAUDE I. BAKEWELL.

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**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSOURI,
DIVISION ONE.**

To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:

Petitioner, Mary Lois McIntosh, respectfully prays that
a writ of certiorari shall issue to review the judgment and
decree of the Supreme Court of Missouri, Division Num-
ber One, entered on November 5, 1945, in the above enti-
tled cause, being Number 39,392 in the Supreme Court of
Missouri, which judgment reversed a decree rendered by

the State Circuit Court of the City of St. Louis, Missouri, on September 12, 1944 (R., p. 922).

Petitioner's motion for rehearing or to transfer the said cause to the Supreme Court en Banc was overruled on January 7, 1946.

Summary Statement of the Matter Involved. The title to real estate and personal property in Missouri passed under the will of John E. Liggett of Missouri to his daughter, Dolly L. Kilpatrick, as tenant for her life with a remainder over which was contingent until her death.

The will directed that the fee simple and absolute title should vest in "the heirs of her body." Mary Lois McIntosh and Elizabeth Kennard became "the heirs of her body" on her death on August 10, 1928.

In 1923 in a suit by life tenants and on a petition limited to vested interests the Circuit Court of St. Louis by its decree had conveyed the title to certain life tenants to be held "under and subject to the provisions of said will" (R., p. 77).

A recital in that decree and conveyance contradicted the will with respect to then future and contingent remainders. It recited that on the death of Mrs. Kilpatrick the title would vest, not in "the heirs of her body," as the will directed, but would pass on her death to her sister, Ella L. Wiggins, for her life, and would vest on the death of Mrs. Wiggins in contingent remaindermen not ascertainable until the death of Mrs. Wiggins.¹

¹ The devolution of future and contingent interests had not been adjudged or decided by the Circuit Court. Its decree and conveyance was written by counsel. Counsel for Ella L. Wiggins and counsel for a guardian "agreed" upon that recital when preparing the decree for the Circuit Court (R., p. 211).

But on appeal in the same case the same counsel, who in the Circuit Court had "agreed" that on the death of the daughter the title would pass to her sister, told the Supreme Court that the testator's intention

Under the law of Missouri such recital in the decree and conveyance of the State Circuit Court had been not only erroneous but void.

But under that erroneous and void recital Ella L. Wiggins took possession of the property, which the will directed should vest in "the heirs of the body" of her sister.

A Federal Court, in litigation between Mary Lois McIntosh and Ella L. Wiggins, ruled that the State Circuit Court had had jurisdiction to prematurely adjudicate the future devolution of contingent interests, and that the recital in its decree and conveyance, although erroneous, had been valid, sustained it as res adjudicata, and ruled that the title was "as it had been adjudged to be" by the State Circuit Court, and was, therefore, in Ella L. Wiggins.

was that on the death of the daughter the property should vest in "the heirs of her body" (*Kennard v. Wiggins*, 160 S. W. [2d], p. 711).

Such counsel had not informed the Supreme Court in their briefs of the recital in the decree.

And Ella L. Wiggins pleads that she did not present such recital (viz., "the challenged paragraph") to the Supreme Court for review because she "had no desire to have that provision of said decree reviewed or altered" (R., p. 346).

On that appeal the Supreme Court said that the testator's will:

"creates life estates only in his daughters, with contingent remainders over in the heirs of their respective bodies, and that the lineal descendants only of each daughter who answers the description of such heirs at the time of her death take such remainders * * *" (*Wiggins v. Perry*, 271 S. W., p. 826; not officially reported).

Subsequently, and on a later appeal in the same case, the Supreme Court of Missouri held that it

"was at no time attempting to specifically rule as to whether or not the interest of a daughter dying without issue would pass to the surviving daughters successively for life, and would not pass to the possession of the surviving issue of a deceased daughter until the death of the last daughter" (*Wiggins v. Perry*, 119 S. W. [2d], p. 844, 343 Mo. 40).

But now the Supreme Court of Missouri has adjudged:

"No judge, by reading the briefs in the will construction suit appeal, would even suspect such a construction as that contained in the challenged paragraph of the decree. * * * the briefs would suggest that no such construction was made" (*Kennard v. Wiggins*, 160 S. W. [2d], p. 711; not officially reported).

Subsequently, such erroneous recital was "declared void" by the Supreme Court of Missouri for lack of jurisdiction of its subject matter and for fraud, and that Court construed the will and adjudged title under the will in these precise words:

"By all the rules of construction the term **heirs of the body**, as used in the Liggett will, paragraph above quoted, means the heirs of the body of a daughter, **at the time** of the death of the daughter, and not at the time of the death of the last surviving daughter. * * * Hence, when Dolly L. Kilpatrick died the 1/6 interest that came to her upon the death of her sister, Cora B. Fowler, vested in her daughter, Mary Lois Perry, now Mary Lois McIntosh, and the present plaintiff [Elizabeth Kennard], 1/12 interest in each" (160 S. W. [2d], p. 709).

The Supreme Court of Missouri awarded to one remainderman under the will, Elizabeth Kennard, her title and property under the will with the net income therefrom after August 10, 1928.

But the same Court denied to the other remainderman, Mary Lois McIntosh (Petitioner here), her title and property under the will and the net income therefrom, amounting to \$250,169.85, which is being held in a special account pending this litigation, with interest, for a total sum of \$386,247.94, and held that this Petitioner is bound and concluded by the recital which it had adjudged void, solely because of such Federal judgments. The Federal Court had ruled the void decree of the State Circuit Court to be res adjudicata. The Supreme Court of Missouri ruled the Federal judgments to be res adjudicata and that because of such Federal judgments Petitioner is bound and concluded by a void recital in a decree and conveyance of the Circuit Court of Missouri.

It held that even though such recital in the decree and

conveyance of the State Circuit Court had been void because of lack of jurisdiction and because of fraud, yet Mary Lois McIntosh could not acquire her property and title under the will, as construed by it, because in a suit by Mary Lois McIntosh the Federal Court had upheld the jurisdiction of the State Circuit Court, and had sustained such recital in the decree and conveyance as valid. It held that such Federal judgments were res adjudicata and that, therefore, Mary Lois McIntosh was bound and concluded by the recital in the decree of the State Circuit Court which under the law of Missouri had been void for lack of jurisdiction and for fraud.

Such Federal judgments had been rendered out of deference to the purported validity of such recital in the decree of the State Circuit Court and had been rendered before the State Circuit Court and the State Supreme Court itself had deleted such recital from that decree and conveyance by declaring it void.

The Federal Court had refused to hear Mary Lois McIntosh with respect to her right under the will and had refused to determine her title under the will because the Federal Court had ruled that the recital in the decree and conveyance of 1923 had adjudged title between Mary Lois McIntosh and Ella L. Wiggins, although neither could have claimed any title until 1928. Ruling that the State Circuit Court had had jurisdiction, while the life tenants had been alive, to adjudge against the title of future and contingent remaindermen before such title had come into existence, the Federal Court had rested its judgment solely upon the erroneous and void recital, which had appeared in the decree and conveyance of the State Circuit Court. The Federal Court had also ruled that such recital in the decree and conveyance of the State Circuit Court had not been the result of fraud.

After such Federal judgments had been rendered the

Circuit Court, which had made the basic decree and conveyance, adjudged the erroneous recital thereof to have been void. The State Circuit Court specifically adjudged:

- a) that it had not had jurisdiction while life tenants had been alive to adjudge against the title of future and contingent remaindermen before such title had come into existence (R., pp. 120 and 875);
- b) that the erroneous recital in its own decree and conveyance had been void because of fraud; and
- c) that on the death of Dolly L. Kilpatrick the fee simple title had vested in Mary Lois McIntosh and Elizabeth Kennard and, therefore, that Ella L. Wiggins had never had title.

The Supreme Court of Missouri affirmed each of those rulings by the State Circuit Court (Kennard v. Wiggins, 160 S. W. [2d] 706).

The Supreme Court of Missouri adjudged that such erroneous recital in the former decree of the State Circuit Court had "wrongfully deprived" the rightful owner of her property; and that "to refuse redress would be a reproach to the administration of justice."

The State Circuit Court fully redressed the injury which it had caused to Mary Lois McIntosh and Elizabeth Kennard by having entered a decree and conveyance which contained a wrongful and void recital.

It did so by separate decrees in favor of each of them which adjudged such wrongful recital in its own previous decree to have been void; adjudged that title under the will had vested in each of them on August 10, 1928 and ordered restitution of all of which they had been wrongfully deprived, i. e., the possession of their property as of August 10, 1928, together with the income therefrom after that date, which had been held in a separate account pending this litigation at the direction of Mrs. Wiggins.

In redressing the injury which it had caused to Mary Lois McIntosh the State Circuit Court found that the

judgments of the Federal Court had been merely the consequence of the wrongful and void decree of the State Circuit Court; that the Federal judgments had rested solely upon it (R., p. 879); that it (the State Circuit Court) possessed complete and summary jurisdiction to correct any injury which it had caused by its own decree; and that it could not be deprived of its inherent jurisdiction to correct any injury which had been caused by its own wrongful and void decree, or to compel restitution, merely because a Court of another jurisdiction had entered a judgment based solely upon the wrongful and void decree of the State Circuit Court itself (R., p. 894). Therefore, in order to grant full redress for the wrong and injury occasioned by itself, the State Circuit Court enjoined the Defendants from claiming any right, title or benefit under the judgments of the Federal Court, which had rested solely upon the wrongful and void decree of the State Circuit Court (R., p. 879).

On separate appeals the Supreme Court of Missouri affirmed the decree of redress and restitution which the Circuit Court had rendered in favor of Elizabeth Kennard.

But it reversed the decree of redress and restitution which the Circuit Court had made in favor of Mary Lois McIntosh solely because of the Federal judgments between Mary Lois McIntosh and Ella L. Wiggins, even though such Federal judgments had been the consequence of the wrongful act of the Circuit Court itself and had rested solely upon the wrongful and void recital in the decree of the State Circuit Court, and even though the State Circuit Court and the State Supreme Court itself had adjudged such wrongful recital to have been void because of fraud and because of lack of jurisdiction.

In this later controversy the Supreme Court of Missouri was determining title to real estate in Missouri.

By its own judgment the Supreme Court of Missouri had established that the State Circuit Court had not and could

not have adjudged in 1923 a title which did not come into existence until 1928, and therefore that the recital in the decree which had purported to do so had been a nullity.

But, nevertheless, it ruled that Mary Lois McIntosh was bound and concluded by that nullity because of the Federal judgments.

The Supreme Court ruled that even though, in fact, the State Circuit Court had lacked jurisdiction to adjudge against the future and contingent title of contingent remainders before such title had come into existence (R., p. 931), yet such issue of jurisdiction had been litigated in the Federal Court; and that the issue of fraud had been fully litigated and decided in the Federal Court "and the (Federal) judgments which determined those issues remain in full force and effect" (R., p. 932) and were res adjudicata and that because of such Federal judgments, the recital in the decree of the State Circuit Court which, as a decree, was void under the law of Missouri, was nevertheless binding and conclusive upon Mary Lois McIntosh (R., p. 933).

It thus ruled that even though a Circuit Court of Missouri had lacked jurisdiction to adjudge title to real estate and even though its decree, *per se*, could not affect such title, that nevertheless a Federal judgment, upholding such jurisdiction, could vitalize such a void decree and make it effective so as to deprive Petitioner of her title to real estate contrary to the law of Missouri.

It thus held that the title to real estate in Missouri is not governed by the will which devised it, nor by the decisions of the Highest Court of Missouri, but is governed by a Federal judgment which holds that a State Circuit Court had rendered a judgment, which the highest Court of the State said it had not rendered and could not have rendered.

The Federal judgment is contrary to the truth. But the Supreme Court of Missouri gives full force and effect to

the Federal judgment which evidences an untruth, as opposed to the truth as established by its own decision.

Petitioner here has been deprived of her right to acquire property devised to her by the will without any opportunity to be heard by any Court with respect to her title and her right to acquire that title under the will.

The Federal Court had refused to hear this Petitioner with respect to her right and title under the will (R., pp. 97 and 464) because the Federal Court erroneously ruled that she might have been heard in the original case in the State Court and that the State Circuit Court had had jurisdiction to hear her.

The Supreme Court of Missouri has adjudged that this Petitioner could not have been heard with respect to her right and title under the will in the original case in the State Circuit Court because that Court had lacked jurisdiction to adjudge future and contingent interests.

But the Supreme Court of Missouri now holds that this Petitioner is bound and concluded and deprived of her right to acquire property under the will by the recital in the decree of the State Circuit Court (in which case the Circuit Court had lacked jurisdiction to hear her) because of the Federal judgments, which themselves had refused to hear or determine Petitioner's right to acquire that property under the will because of the recital in the decree of the State Circuit Court.

Thus the Federal Court sustained, as res adjudicata, a void decree of a State Circuit Court; and the State Supreme Court which adjudged such decree to have been void thus sustains, as res adjudicata, the judgment of the Federal Court which had held it to be valid; and holds therefore that this Petitioner is bound and concluded by a void recital in a decree of a State Circuit Court which deprived her of her right to acquire property under the

will without any opportunity for this Petitioner to have been heard with respect to that right.

Jurisdiction. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the "Act of February 13, 1925," C. 229, Section 1, 43 Stat. 937 (28 U. S. C. A., Sec. 344), and also under Section 240 of the Judicial Code, as amended by the "Act of February 13, 1925," C. 229, Section 8 (a, b, d), 43 Stat. 940 (28 U. S. C. A., Section 350), and under Rule 38 of this Court.

The effect of a Federal judgment as res adjudicata in a State Court raises a Federal question reviewable by this Court under those Sections (*Toucey v. New York Life Insurance Company*, 314 U. S. 118, p. 129; *Stoll v. Gottlieb*, 305 U. S. 165, p. 167); depriving Petitioner of her right to acquire property under the will without any opportunity to be heard with respect to such right under the will violates the Fourteenth Amendment to the Federal Constitution and presents a question reviewable by this Court; and since the Supreme Court of Missouri ascribes to the Federal Court the binding force and effect of res adjudicata and Petitioner challenges that judgment for want of due process, "it becomes the duty of this Court" to determine that question (*Hansberry v. Lee*, 311 U. S. 32, p. 40).

The question of the violation of a right guaranteed by Section 1 of Amendment XIV to the Federal Constitution was first raised in Defendants' motion for rehearing in the Circuit Court (R., p. 900) and was presented to the Supreme Court in the briefs.

After the opinion of the Supreme Court had been rendered, which sustained the Federal judgments as res adjudicata, it was again raised in the petition for rehearing (R., pp. 941 and 947).

The Court overruled such motion for rehearing without opinion.

Questions Presented. 1) When Petitioner had not been heard and had never had the opportunity of being heard in any Court with respect to her rights under the will, does not the sustaining of any plea of res adjudicata which has the effect of denying her absolute rights under the will, as construed by the Supreme Court of Missouri, deny to Petitioner the due process of law and the equal protection of the laws which is guaranteed to her under the Fourteenth Amendment to the Federal Constitution?

2) When a decree of a State Circuit Court had conveyed the title to real estate to life tenants under a will and had adjudged the then future interests to be contingent remainders; and a recital in its decree and conveyance had contradicted the will with respect to the devolution of such future and contingent interests by reciting that on the death of a life tenant the title would pass to her sister and not to "the heirs of her body" as directed by the will, and a Federal Court had sustained the jurisdiction of the Circuit Court over the subject matter of such recital and had adjudged that because of such recital the title had passed to the sister; and when the highest Court of that State had subsequently adjudged such recital in the decree and conveyance of the Circuit Court to have been void for lack of jurisdiction of its subject matter; and had construed the will and had adjudged that under the will on the death of the life tenant the title had vested in "the heirs of her body" then is such Federal judgment with respect to the jurisdiction of the State Circuit Court binding, conclusive and controlling upon the highest Court of that State, so as to deprive it of the power of final determination of the jurisdiction of

the Courts of that State and of the title to real estate in that State and thereby deprive an heir of the body of the life tenant of the title devised to her by the will, as construed by the Supreme Court of Missouri, when in a later controversy the Supreme Court of Missouri is determining title to real estate?

3) When a Federal Court had adjudged that such a recital in a decree and conveyance of a State Circuit Court, as described in question 2), had not been the result of fraud; and when the highest Court of the State had subsequently adjudged such recital in the decree and conveyance of the Circuit Court to have been void because of fraud, then is such Federal judgment with respect to the issue of fraud in the decree and conveyance of the State Circuit Court res adjudicata in the Courts of that State and is it conclusive and controlling with respect to the effect of such decree and conveyance upon the title to real estate, when in a later controversy the Supreme Court of that State is determining title to real estate?

4) When a State Circuit Court by its own act in having entered the decree and conveyance containing an erroneous and a void recital has wrongfully deprived the rightful owner of her title to real estate and personal property, which under the law of that State belonged to her, and when the Supreme Court of that State had adjudged that to refuse relief would be a reproach to the administration of justice, then is such State Circuit Court deprived of its inherent and summary jurisdiction to redress the wrong which it itself had occasioned and to administer justice by vacating the void and erroneous recital in its own decree and conveyance merely because a Federal Court had adjudged that the decree of the State Circuit Court had contained such a recital and had erroneously adjudged

that it had been valid, or because the Federal Court had compounded such injury by resting its own judgment upon the void and wrongful recital in the decree and conveyance of the State Circuit Court?

5) When a Federal Court had adjudged contrary to the law of Missouri, that a decree and conveyance of a Circuit Court of Missouri had been effective to put title to real estate in Ella L. Wiggins on August 10, 1928, as opposed to the will which directed that the title to the same property should vest in Mary Lois McIntosh and Elizabeth Kennard on August 10, 1928; but when the Supreme Court of Missouri had subsequently adjudged that the title to the same real estate had vested under the will in Mary Lois McIntosh and Elizabeth Kennard on August 10, 1928, and that the recital in the decree and conveyance of the State Circuit Court had not put the title in Ella L. Wiggins on that date, then is such judgment with respect to the effect of such recital in the decree and conveyance of the State Circuit Court res adjudicata in the Courts of Missouri and is such Federal judgment binding, conclusive and controlling when in a later controversy the Supreme Court of Missouri is determining title to real estate?

6) When such recital in a decree and conveyance of a Circuit Court of Missouri, which affects title to real estate, has been adjudged void by the Supreme Court of Missouri, then is such recital to be given effect by the Supreme Court of Missouri merely because a Federal Court had adjudged, contrary to the law of Missouri, that such recital had been valid when in a later controversy the Supreme Court of Missouri is determining title to real estate?

Those Federal questions are real and substantial. They involve the effect of a Federal judgment, as res adjudicata

in the Courts of a State, when the Courts of that State are determining title to real estate and when such Federal decisions had sustained as res adjudicata a decree and conveyance of a State Circuit Court, which affected title to real estate, and which decree and conveyance of the State Circuit Court was void under the law of that State and when, therefore, such Federal decision is opposed to the decision by the highest Court of that State with respect to the following matters of local law:

- a) the title to real estate;
- b) the jurisdiction of a State Circuit Court over a particular subject matter in a particular case, which affected the title to real estate; and,
- c) the validity and effect of a recital in a decree of a State Circuit Court which affects the title to real estate.

Such Federal questions also involve the effect, if any, of a Federal judgment which had rested solely upon a void recital in a prior decree and conveyance of a State Circuit Court, to deprive that State Circuit Court of its power to vacate its own void decree and conveyance; to redress the injury which its void and wrongful decree had caused, and to compel restitution.

They also involve the power of a Court of Missouri to deprive a party of her right to acquire property devised to her by a will, without any opportunity to have been heard by any Court with respect to her right to acquire that property under the instrument which created it, as that instrument had been construed by the Supreme Court of the State.

The Federal question was the basis for the decision.

The opinion states that even though the State Circuit Court in the original case "had lacked jurisdiction" (R., p. 931) of the subject matter, yet such issue of jurisdic-

tion had been litigated (in the Federal Court) and that the issue of fraud in the procurement of the original decree had been fully litigated and decided in the Federal suit "and the (Federal) judgments which determined those issues remain in full force and effect" (R., p. 932).

Thus the opinion shows that it could not have been given without the decision that such Federal judgments were *res adjudicata*.

Reasons for Granting the Writ. 1) The Supreme Court of Missouri has denied to Petitioner due process of law and the equal protection of the laws by depriving her of her right to acquire property which vested in her under a will, without any hearing as to her right or title under that will, in violation of the XIV Amendment to the Federal Constitution.

The right to "acquire" property is protected by such provision (*Buchanan v. Warley*, 245 U. S. 60, p. 74).

2) The judgment of the Supreme Court of Missouri ascribes to the judgment of a Federal Court the binding force and effect of *res adjudicata* and Petitioner challenges that judgment for want of due process. Under those circumstances "*** it becomes the duty of this Court" to ascertain whether the litigant has been afforded due process as prescribed by the Constitution (*Hansberry v. Lee*, 311 U. S. 32, p. 40).

"When a void judgment has been the basis of a second judgment, the latter is subject to reversal by the Supreme Court of the United States on the ground that the second judgment as well as the rendition of the first judgment is a violation of the Fourteenth Amendment" [Restatement of the Law of Judgments, Sec. 13 (c), p. 76].

The Federal Court had refused to hear this Petitioner with respect to her right and title under the will (R., pp.

97 and 464) and held the decree of the Circuit Court to be res adjudicata of the title because the Federal Court ruled that the State Circuit Court had had jurisdiction.

The State Circuit Court subsequently adjudged that it had been

“* * * without jurisdiction to adjudge at the instance of life tenants the interests of prospective contingent remaindermen before such interests had come into existence” (R., pp. 120 and 875).

The Supreme Court of Missouri affirmed that ruling (R., pp. 172 and 876).

Thus the State Supreme Court established that this Petitioner could not have been heard in the original case; but it sustains as res adjudicata a judgment of the Federal Court which had refused to hear Petitioner because the Federal Court had said that Petitioner might have been heard in the original case in the State Circuit Court.

By holding the judgment of the Federal Court res adjudicata with respect to jurisdiction and denying this Petitioner her title under the will because of such holding, this Petitioner has been deprived of her title under the will without any opportunity for a hearing with respect to her right to acquire her property under the will.

By the Federal Court ascribing the force and effect of res adjudicata to a void decree of the State Circuit Court, and by the Supreme Court of Missouri ascribing the force and effect of res adjudicata to that Federal judgment with respect to jurisdiction of the State Circuit Court, the Supreme Court has given vitality to a void judgment of the State Circuit Court which was admittedly entered without jurisdiction, and holds it conclusive against this Petitioner although this Petitioner could not have had an opportunity for a hearing in that case.

3) The Supreme Court of Missouri has decided Federal questions of national importance in a manner which disturbs the equal administration of justice in coordinate State and Federal Courts, sitting side by side, and which does violence to the principle of uniformity within a State. The issues involved are important to the orderly administration of justice in the relationship of State and Federal Courts. Some of those Federal questions have not been heretofore decided by this Court. The decision of others is probably contrary to applicable decisions of this Court and contrary to the principles upon which such decisions of this Court rest.

The decision of this Court in the Tompkins case, 304 U. S. p. 77, was based upon the principle of uniformity within a State and its purpose was to avoid the disturbance of equal administration of justice in coordinate State and Federal Courts (Klaxon v. Stentor Co., 313 U. S. 496).

The principles of that decision established the supremacy of State decisions with respect to matters of local law in order to avoid the confusion and injustices arising from inconsistent Federal and State decisions with respect to State law.

Accordingly, this Court has held that a decision by the highest Court of a State with respect to each of the following matters of local law is "supreme and controlling":

- a) with respect to title to real estate (Thompson v. Magnolia Petroleum Co., 309 U. S. 478, p. 484);
- b) with respect to the meaning and effect of a will (Lyeth v. Hoey, 305 U. S. 188, p. 193);
- c) with respect to the jurisdiction or lack of jurisdiction of a State Court over a particular subject matter (Standard Oil Co. v. Missouri, 224 U. S. 270, p. 281; Ex parte Texas, 315 U. S. 8);

d) with respect to the validity and effect of a decree of a Court of that State (Oklahoma Packing Co. v. Gas Co., 309 U. S. 4), and necessarily, therefore, with respect to the issue as to whether a decree of a State Court had or had not been the result of fraud.

But in the instant case the Supreme Court of Missouri has denied the equal protection of the laws; has deprived this Petitioner of property which under the law of Missouri had vested in her, by sacrificing the supremacy of its own decisions with respect to each of such matters of local law.

It holds that its own decisions are not supreme and controlling with respect to title to real estate under a will; with respect to the lack of jurisdiction of a Circuit Court of Missouri; with respect to the invalidity of a decree of a Circuit Court of Missouri and with respect to fraud in a decree of a Circuit Court of Missouri.

It denies the supreme and controlling effect of its own decisions by holding a Federal judgment, with respect to each of those issues, to be res adjudicata and, therefore, to be supreme and controlling in Missouri. It so holds notwithstanding the fact that such Federal judgments had rested upon a recital in a prior decree of a Circuit Court of Missouri, which the Supreme Court of Missouri had "declared void," and notwithstanding the fact that such Federal judgments had sustained as valid such recital in the prior decree of the Circuit Court of Missouri before the supervening decision by the Supreme Court of Missouri which declared such recital in the decree of the State Circuit Court to have been void.

4) The Supreme Court of Missouri ruled that because of a Federal decision, the title to real estate was contrary to the law of Missouri and was contrary to that title as adjudged by the Supreme Court of Missouri under the instrument which passed that title. Such ruling is con-

trary to the decisions of this Court that a State is "the sole mistress" of the devolution of land (*Hood v. McGehee*, 237 U. S. 611, p. 615); and is contrary to the decisions of this Court which hold that a Federal decision with respect to title to real estate is not res adjudicata after a supervening decision to the contrary by the highest State Court with respect to such title (*Blair v. Commissioner*, 300 U. S. 5, p. 9; *Messenger v. Anderson*, 225 U. S. 436, p. 445).

5) The Supreme Court ruled that the will, which devised title, as that will had been construed by it, is not the measure of the title to real estate in Missouri, but that a decree of a Court of another jurisdiction (a Federal Court) is.

That ruling is contrary to the decision of this Court in *Clarke v. Clarke*, 178 U. S. 186, where this Court adjudged that the fundamental principle which gives to a sovereignty an exclusive jurisdiction over land within its borders is not dependent upon the non-existence of a decree of another jurisdiction, and adjudged:

"Manifestly, an authority cannot be said to be exclusive, or even to exist at all, where its exercise may be thus frustrated at any time" (p. 192).

6) The Supreme Court of Missouri held a Federal decision with respect to the jurisdiction of the Circuit Court of Missouri to be res adjudicata and controlling, as opposed to its own decision against such jurisdiction of the Circuit Court of Missouri.

But this Court ruled to the contrary in *Standard Oil Co. v. Missouri*, 224 U. S., p. 281, and *Ex parte Texas*, 315 U. S. 8, and this Court has also ruled:

"* * * no Government could maintain the administration or execution of its laws if the jurisdiction of its judicial tribunals were subject to the determina-

tion of another" (Freeman v. Howe, 24 Howard, p. 459).

In Stoll v. Gottlieb, 305 U. S. 165, this Court decided that a Federal decision of a **Federal question** (the jurisdiction of a Federal Court over a particular subject matter) was res adjudicata between the parties in the Courts of a State. But this Court expressly excepted from that decision and from its effect a situation in which:

"courts with jurisdiction of the later controversy are passing upon matters of * * * real estate titles" (p. 176).

It excepted that situation because of its own decisions cited, which sustain the exclusive jurisdiction of State Courts to finally determine title to real estate.

The question here is this: Is a Federal decision of a **State question** (the title to real estate and the jurisdiction of a State Court over a particular subject matter; i. e., the premature and void adjudication of prospective and contingent titles under a will) res adjudicata in the highest Court of the State when such Federal decision of such **State question** is opposed to the supervening decision by the highest Court of that State, and when the highest Court of that State is passing upon the matter of real estate titles.

7) The Supreme Court of Missouri ruled that even though it itself had adjudged the recital in a decree and conveyance of the Circuit Court of Missouri, which contradicted the will, to have been the result of fraud, yet, nevertheless, because a prior Federal judgment had ruled the same decree of the State Circuit Court to have been free from fraud, such Federal judgment was res adjudicata and that, therefore, because of such Federal judgment, Petitioner is deprived of her title to real estate in

Missouri under the will and is bound by the recital of the decree of a Missouri Circuit Court, which the Courts of Missouri had vitiated because of fraud and which the Courts of Missouri adjudged had "wrongfully deprived" the rightful owner of her property and title under the will.

That ruling presents the necessity for a decision by this Court as to whether the highest Court of a State is the final and supreme authority with respect to fraud in a decree and conveyance of a Court of that State which affects title to real estate, or whether such decision by the highest Court of a State declaring void such decree and conveyance which affects title to real estate may be nullified by a decision to the contrary by a Court of another jurisdiction.

The effect of the decision of the Supreme Court of Missouri is that a decree and conveyance of a State Circuit Court which the Supreme Court of Missouri has adjudged void because of fraud and because of lack of jurisdiction is, nevertheless, effective to deprive the rightful owner of the title to property, because of a Federal judgment.

Such result is contrary to the decision by this Court that

"* * * an asserted title to property, founded upon fraud, is utterly void" (*United States v. The Amistad*, 15 Peters, p. 594).

8) This Court has uniformly ruled that every Court has inherent power to prevent its process causing an injustice; and that every Court which has caused an injustice and injury by its own erroneous and void decree may redress that injury and compel restitution (*Krippendorf v. Hyde*, 110 U. S. 276, p. 283; *Dickey v. Turner*, 49 Fed. [2d] 998, p. 1000, and decisions of this Court there cited).

But the decision below deprives a State Court of its inherent jurisdiction to prevent its decree from working an injustice, and deprives it of its inherent jurisdiction

to correct an injury caused by its own wrongful decree and to compel restitution merely because a Federal judgment had compounded that injustice by sustaining as valid and following the erroneous and void recital in a decree of a State Circuit Court, which worked the injustice.

It holds that a State judgment, condemned in the Courts of that State because of fraud and as working an injustice, may yet be effective to work an injustice because a Federal judgment had rested upon it. Thus it makes both a void decree of the State Circuit Court and the Federal judgment which rested upon it instruments of injustice. It causes both Courts to pervert the purpose of their existence.

This Court has not heretofore been called upon to adjudicate against the power of a Federal judgment to deprive a Court of a sovereign State of its inherent jurisdiction to correct an injustice which had been caused by that State Court itself. It has, however, at all times prevented a Federal Court from becoming an instrument of injustice in whatever manner it had been accomplished, and has found adequate means to prevent injustice or unjust enrichment through the decrees of Federal Courts (*Hazel-Atlas Co. v. Hartford Co.*, 322 U. S. 238, p. 244).

Where one judgment had rested solely upon a prior judgment and such prior and basic judgment was "without validity, force or effect and ought never to have existed," this Court has itself reversed the dependent judgment without further proceedings (*Butler v. Eaton*, 141 U. S. 240, p. 243; *Chicago & Vincennes R. R. Co. v. Fosdick*, 106 U. S. 47, p. 84; *Ballard v. Searls*, 130 U. S. 50, p. 54).

When a void judgment has been the basis of a second judgment, the Court which rendered the void judgment may redress the injury occasioned thereby and, in doing so, may deprive any party of advantage or benefit gained

under it (*Arrowsmith v. Gleason*, 129 U. S. 86, p. 101; *Johnson v. Waters*, 111 U. S. 640, p. 667).

An injunction restraining any benefit under such judgment does not contravene the law nor affect the Court.

"It would simply take from him the benefit of judgments obtained by fraud" (*Marshall v. Holmes*, 141 U. S. 589, p. 600).

9) A Federal decision of a **State question**, which is opposed to a supervening decision by the highest Court of that State, cannot be res adjudicata in the Courts of that State.

Under specific decisions of this Court, resting upon principles declared by this Court, when a Federal decision of a **State question**, such as title to real estate, the jurisdiction of a State Court to enter a decree which affects title to real estate, and the issue of fraud in a State Court decree which affects title to real estate, is opposed to a supervening decision by the highest State Court, such Federal decision cannot be res adjudicata in the Courts of that State.

It cannot be because that sovereign State has the exclusive jurisdiction to finally determine the title to such real estate and its decision is supreme and controlling.

The object and purpose of the decisions of this Court is to give to each sovereign State exclusive jurisdiction to adjudge title to real estate, as a matter of State law, with respect to which State decisions are "exclusive, supreme and controlling"; and, correspondingly, is to give to the Federal Courts exclusive jurisdiction to finally determine all matters of Federal law, with respect to which Federal decisions are supreme and controlling.

The principles declared by this Court compel the limitation upon the "Court made" doctrine (322 U. S., p. 248) of res adjudicata, which has been placed upon it by the

decisions of this Court, when a Federal decision of a **State question** has been invoked as res adjudicata in the Courts of that State, or when a State decision of a **Federal question** has been invoked as res adjudicata in a Federal Court. Such limitation is compelled if the finality and supremacy and controlling effect of State decision on State questions, and of Federal decision on Federal questions, as declared by this Court, is in fact to be achieved.

The decisions enforce that limitation.

A right under Federal law, adjudged by a Federal judgment, can never be impaired by a State decision. Examples: *Deposit Bank v. Frankfort*, 191 U. S. 499; *Stoll v. Gottlieb*, 305 U. S., p. 170; *Dupasseeur v. Rochereau*, 21 Wallace 130.

Similarly, a right under State law, adjudged by a State judgment, can never be impaired by a Federal decision. Examples: *Blair v. Commissioner*, 300 U. S., p. 9; *Messenger v. Anderson*, 225 U. S., p. 444.

The two different but parallel lines of decision, applicable to two different situations, achieve the result necessary under the principle which was stated in the *Frankfort* case, to wit:

“The same reasoning which permits to the States the right of final adjudication upon purely State questions requires no less respect for the final decisions of Federal courts of questions of national authority and jurisdiction” (191 U. S., p. 517).

In order to make final, supreme and controlling the decisions of either jurisdiction with respect to a matter within the ambit of its exclusive jurisdiction and of its exclusive power of final determination, this Court has frequently said that a prior decision by a Federal Court of a **State question**, which was opposed to a supervening decision by a State Court “must yield” to the supervening

State decision as "supreme and controlling," and likewise has said that a prior decision by a State Court of a Federal question, which was opposed to a supervening Federal decision, "must yield" to the supervening Federal decision.

Since such prior decisions of Courts of another jurisdiction contrary to the decisions by the supreme authority "must yield" to the decisions of the Courts having exclusive jurisdiction and supreme power to finally determine matters within their peculiar province, it follows that such prior decisions of Courts of another jurisdiction are not and cannot be res adjudicata in the Courts having jurisdiction to finally determine such matters.

Such is the limitation imposed by the decisions of this Court upon the doctrine of res adjudicata.

It rests upon the necessity for the supremacy of truth and of right, for the protection of which, in the administration of justice, Courts were established.

"It has been truly said that in our country nothing is decided finally until it has been decided rightly; and the statement is as true of judicial as it is of other questions." (History of the Development of the Law by Hon. M. F. Morris.)

Such limitation is essential to the orderly administration of justice in the relationship of State and Federal Courts. Without it the smooth, harmonious administration of justice in coordinate Courts cannot be achieved, nor can the equal administration of justice be achieved. Such a limitation avoids the confusion of judgment resulting from the mere accident of diversity of citizenship which may cause the denial of rights guaranteed by the XIV Amendment to the Federal Constitution, which guarantees due process and the equal protection of the laws of a State.

10) The decision below, by sustaining the Federal judgment as res adjudicata, violates the rights thus guaranteed:

One clause of the same will devised the title to the same property to Mrs. Kilpatrick for life, with remainder over to "the heirs of her body."

The decision below held that clause effective as to the life tenant and as to one remainderman—one heir of her body—but ineffective as to the other remainderman—the other heir of her body, because of a Federal judgment which resulted from the mere accident of diversity of citizenship.

In construing the will the Supreme Court of Missouri showed that under the will and under the law of Missouri the rights of both remaindermen are identical. But the effect of its decision is to construe the same clause in the same will and with respect to the same property in one way as to one remainderman, and in a different way as to the other, solely because of a Federal judgment, although under the will the rights and titles of both remaindermen were identical. Thus, by giving effect to a Federal judgment, which is contrary to the law of Missouri, the Supreme Court of Missouri has denied to this Petitioner her right to due process and to the equal protection of the law of Missouri, in violation of the right guaranteed to her by the XIV Amendment to the Federal Constitution.

11) Under Federal decisions, the doctrine of res adjudicata cannot be applied to Federal judgments so as to destroy "the integrity of judicial process" (322 U. S., p. 246).

The highest principle of public policy is that "courts of justice must not be used as instruments to effectuate frauds or injustices" (38 Fed. Supp., p. 931).

The principle of "the integrity of judicial process" is supreme and controls over any doctrine of res adjudicata,

when a judgment of a Federal Court, which makes that Federal Court an instrument of injustice, and a mere compounder of a wrong done by another Court, when such Federal judgment is pleaded in such other Court as res adjudicata (Klaxon Co. v. Stentor Co., 322 U. S., p. 246; American Insurance Co. v. Lucas, 38 Fed. Supp., p. 931).

Indisputably, the Federal judgment made the Federal Court an instrument of injustice. Indisputably, it compounded a wrongful decree of the State Court of Missouri, which the Supreme Court of Missouri adjudged to have been the result of fraud.

Is a Federal judgment itself free from fraud, when the basic judgment upon which it depends has been adjudged by the Supreme Court of Missouri to have been void because of fraud, or does not, as this Court has said, "fraud vitiate everything"?

12) The decision by the Supreme Court of Missouri that the State Circuit Court had lacked jurisdiction in the original case is binding and controlling upon all Federal Courts (Ex parte Texas, 315 U. S. 8).

That decision establishes that Petitioner could not have been heard in the original case. The Federal Court refused to hear Petitioner and deprived her of her property under the will without a hearing because of the void decree in the original case.

The Supreme Court deprived Petitioner of her right to property devised to her by the will because of the Federal judgments which had sustained the void decree.

The guarantee that no party shall be deprived of her property without a hearing is protected by the Fourteenth Amendment to the Federal Constitution. Petitioner's right to acquire property under the instrument which gave it to her is protected by that Amendment (Buchanan v. Warley, 245 U. S., p. 74).

The decision by the highest Court of Missouri with respect to Petitioner's title under the will is binding and controlling upon all Federal Courts (Lyeth v. Hoey, 305 U. S., p. 193; Central Hanover Bank v. Kelly, 319 U. S. 94, p. 97).

Under the will as construed by the Supreme Court of Missouri itself,

"when Dolly L. Kilpatrick died (August 10, 1928) the 1/6 interest that came to her upon the death of her sister, Cora B. Fowler, vested in her daughter, Mary Lois McIntosh and Elizabeth Liggett Kennard, 1/12 interest in each" (R., p. 928).

Conclusion. Therefore, under the law of Missouri, as determined by its highest Court, Petitioner's title to this property vested in her under the will on August 10, 1928; and the Circuit Court of Missouri had lacked any jurisdiction to adjudge against her title by a decree entered in 1923; and this Petitioner could not have had any opportunity for a hearing in said Circuit Court in 1923.

That law is supreme and controlling.

Under the decisions of this Court it must be given effect and judgments of Federal Courts, which refused to hear or determine Petitioner's right and title under the will, cannot affect the supremacy and controlling effect of the law of Missouri upon the title to the property; Petitioner's rights under the will; nor the lack of jurisdiction of the Circuit Court of Missouri.

Under the decisions of this Court the decree of the Circuit Court in this case applied the law of Missouri and simply restored to this Petitioner property, which under the law of Missouri belonged to her, but of which this Petitioner had been wrongfully deprived by the act of that Court itself in having entered an erroneous and a void decree in a case in which that Court had lacked any ju-

risdiction to hear or determine the right and title of this Petitioner.

Prayer. Petitioner, therefore, prays that a writ of certiorari be issued to the Supreme Court of Missouri, Division Number One thereof, to the end that this cause, being Docket No. 39,392 in said Court, may be reviewed and determined by this Court, and the judgment of the Supreme Court of Missouri may be reversed, and that the judgment of the Circuit Court of the City of St. Louis, as set forth at pages 861 to 900 of the Record, may be affirmed.

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Of Counsel:

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CLAUDE I. BAKEWELL.

April 1, 1946.